STATE OF MICHIGAN
IN THE SUPREME COURT

HAFEZ M. BAZZI,

Plaintiff-Appellee,

vs.

ANNE ELIZABETH MACAULAY,

Defendant-Appellant.

Supreme Court Docket No. 144238
Court of Appeals Docket No. 299239

Trial Court Case No. 2009-762325 DP
(Oakland County Circuit Court)

MARC N. DRASNIN (P36682)
JOELSON, ROSENBERG, MOSS, COHEN,
WARREN & DRASNIN, P.L.C.,
Attorneys for Plaintiff-Appellee
30665 Northwestern Hwy., Suite 200
Farmington Hills, Michigan 48334
(248) 855-3088

ANNE ARGIROFF (P37150)
ANNE ARGIROFF, P.C.
Attorney for Defendant-Appellant
30300 Northwestern Hwy., Suite 135
Farmington Hills, Michigan 48334
(248) 615-4493

LORAINE R. KUHN (P31438)
Co-Counsel for Defendant-Appellant
30500 Northwestern Hwy., Suite 200
Farmington Hills, Michigan 48334
(248) 862-3933

144238

PLAINTIFF-APPELLEE'S RESPONSE AND BRIEF IN OPPOSITION TO DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL THE NOVEMBER 1, 2011 DECISION OF THE COURT OF APPEALS

SUPPORTING EXHIBITS ATTACHED

TABLE OF CONTENTS **PAGE NO.**

INDEX OF AUTHORITIES

INDEX OF EXHIBITS

STATEMENT REGARDING ORDER ON APPEAL

1. On July 1, 2010, the Oakland County Circuit Court entered an Order finding that it had jurisdiction to determine if there was fraud in the acknowledgement of parentage procured by Defendant-Appellant, and appointed a Guardian ad Litem to investigate the allegations of fraud and scope of father-child relationship, and to allow for discovery.

2. On November 1, 2011, the Court of Appeals issued its Opinion, affirming the July 1, 2010, Order of the Oakland County Circuit Court.

3. Plaintiff-Appellee respectfully requests that this Court:

a. Deny Defendant-Appellant's Application for Leave to Appeal;

b. Decline to take jurisdiction of this case, therefore permitting the July 1, 2010 Order of the Oakland County Circuit Court to be implemented forthwith; and

c. Plaintiff-Appellee be granted such other relief as is just and equitable.

QUESTIONS PRESENTED

I. Plaintiff-Appellee submits that leave should not be granted to review the decisions of the Circuit Court (July 1, 2010) and Court of Appeals (November 1, 2011), concerning the following matters, and that the Circuit Court should forthwith be permitted to effectuate its order as previously entered. In reviewing the Application for Leave, this Court must consider:

A. The Circuit Court and Court of Appeals properly determined that Plaintiff-Appellee had sufficient standing to maintain his claims under the Paternity Act in light of the underlying facts, including allegations of fraudulent conduct in Defendant-Appellant's procurement of an Acknowledgement of Parentage, and that it was proper to appoint a Guardian ad Litem and permit discovery to assist the Circuit Court in making its ultimate determination.

Plaintiff-Appellee said Yes.
Defendant-Appellant said No.
The Court of Appeals said Yes.

B. The Court of Appeals was correct in ruling that the Circuit Court did not exceed its authority in permitting the action to proceed, and defer ruling on Defendant-Appellant's Motion To Dismiss, appoint a Guardian Ad Litem, and retain jurisdiction based on the underlying facts and circumstances of the case

Plaintiff-Appellee said Yes.
Defendant-Appellant said No.
The Court of Appeals said Yes.

C. Under the circumstances of the pending action, the Court of Appeals found that the Circuit Court had discretion and jurisdiction to determine if the Acknowledgement of Parentage relied on by Defendant-Appellant was fraudulently procured and executed, and subject to revocation.

Plaintiff-Appellee said Yes.
Defendant-Appellant said No.
The Court of Appeals said Yes.

D. Plaintiff-Appellee is entitled to constitutional protections to safeguard his liberty interests in the relationship with the minor child.

Plaintiff-Appellee said Yes.
Defendant-Appellant said No.

INTRODUCTION

On August 6, 2009, Plaintiff-Appellee, Hafez Bazzi, filed suit in the Oakland County Circuit Court - Family Division, under the Paternity Act, MCLA 722.711 *et seq.*, requesting a judicial determination that he is the biological father of Iris Macaulay, born January 5, 2005. In response, on December 14, 2009, Defendant-Appellant, Anne Macaulay filed a motion to dismiss Plaintiff-Appellee's action, asserting that a prior acknowledgement of parentage by another man, barred the paternity claim.

Pertinent facts in this proceeding include:

a. An intimate relationship between Plaintiff-Appellee and Defendant-Appellant commencing in 2001;

b. From the time of conception in 2004, Defendant-Appellant represented to Plaintiff-Appellee and countless others, that Plaintiff-Appellee was the child's biological father;

c. Plaintiff-Appellee provided regular support and maintained a close father-daughter/family relationship with the minor child until Defendant-Appellant moved and terminated all contact with Plaintiff-Appellee in April 2008;

d. Defendant-Appellant never revealed to Plaintiff-Appellee that another man, Steven Szakaly, had acknowledged parentage in 2005.[1] In late 2009, Plaintiff-Appellee located Steven Szakaly, who recanted to Plaintiff-Appellee that he was not the biological father of the minor child and that Defendant-Appellant admitted to him that Plaintiff-Appellee was the biological father; and that he acknowledged parentage at Defendant-Appellant's urging after she falsely represented to him that Plaintiff-Appellee wanted nothing to do with the child, and she wanted to legitimize the minor child. Steven Szakaly expressed remorse to Plaintiff-Appellee for his earlier actions, and acknowledged the harm he caused; and

* * * *

[1] Plaintiff-Appellee first learned of the Affidavit of Parentage in the Circuit Court action in 2009.

e. The acknowledgement of parentage was procured by Defendant-Appellant through fraudulent means, and should be void ab initio, and of no legal effect.

On January 15, 2010, Plaintiff-Appellee filed a motion in the Circuit Court to defer the hearing on Defendant-Appellant's motion to dismiss, to appoint a Guardian ad Litem for the minor child to investigate the underlying allegations of fraud and the extent of the Plaintiff-Appellee's relationship with the minor child, and permit necessary discovery.

On January 27, 2010, the Circuit Court granted Plaintiff-Appellee's motion. Defendant-Appellant requested and obtained a stay of the Circuit Court action, and the parties have since been engaged in the appellate proceedings.

SUMMARY OF ARGUMENTS AND REASONS FOR DENYING LEAVE

The instant action involves important issues concerning the declaration of parentage, parental rights and the preservation of those rights. Plaintiff-Appellee filed his action to secure a declaration of his parental rights. Defendant-Appellant has pursued a course of action designed to deny Plaintiff-Appellee access to the judicial system. Examination of the underlying circumstances are required in light of information discovered during these proceedings which indicate the underhanded and fraudulent efforts of Defendant-Appellant to deny Plaintiff-Appellee his parental rights and a relationship with the minor child.

Plaintiff-Appellee, believing himself to be the biological father of Iris Macaulay based on an exclusive relationship with Defendant-Appellant, conception of the child, and multiple years of raising and supporting Defendant-Appellant and the minor child, brought suit in 2009 for a judicial determination of his parental rights. Only upon service of process did Defendant-Appellant respond that another man was the father of the minor child, by virtue of execution of an acknowledgement of parentage after the birth of the child. This fact was never divulged to Plaintiff-Appellee over the three and one-half (3 1/2) years post-birth that he parented, supported and helped raise the minor child.

According to Defendant-Appellant, the acknowledgement of parentage by another individual is alone sufficient to defeat any challenge mounted by Plaintiff-Appellee, as standing is lacking on the part of Plaintiff-Appellee under MCLA 722.714(2), and there is no reason to expand the narrow scope of parties permitted to contest parentage under the statute. This ignores the affirmative claims and allegations of fraud as outlined by Plaintiff-Appellee, as well this

Court's ruling in *Lansing Schools Ed Assoc* v *Lansing Board of Ed*, 487 Mich 349; 792 NW2d 686 (2010), which breaks with the past "flawed" concept of standing and expands standing for persons such as Plaintiff-Appellee who seeks a declaratory judgment as to parentage given the injury he confronts, rights to be preserved, or substantial interest that will be detrimentally affected if Defendant-Appellant is permitted to stand behind the statutory framework governing standing under the paternity act.

Pursuant to MCR 2.116(C)(5), Defendant-Appellant filed her motion to dismiss Plaintiff-Appellee's action. In response, Plaintiff-Appellee asked the Circuit Court to defer ruling on the motion, in light of the allegations of fraud in obtaining the acknowledgement of parentage, the recantation made by the affiant Steven Szakaly, historical relationship involving Plaintiff-Appellee and the minor child, and representations made by Defendant-Appellant to Plaintiff-Appellee and third parties concerning parentage of the minor child.

The Circuit Court and Court of Appeals were both confronted with questions regarding standing under Michigan's Paternity Act, MCLA 722.711 et seq., as well as the effect of an improperly obtained acknowledgement of parentage. Plaintiff-Appellee sought interim relief by deferring a ruling on Defendant-Appellant's motion, the appointment of a Guardian ad Litem and commencement of discovery to determine and protect the rights of all concerned. Plaintiff-Appellee had no opportunity to conduct discovery prior to the filing of Defendant-Appellant's motion. *Marilyn Froling Revocable Trust* v *Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009).

Like Plaintiff-Appellee, the Circuit Court and Court of Appeals were greatly concerned that the fraud alleged to have been perpetrated by Defendant-Appellant in procuring an acknowledgment of parentage, should not be permitted to deprive Plaintiff-Appellee of his parental rights, and the prior father-child relationship. Defendant-Appellant ignores and side steps the issue of fraud, and relies on the mere existence of the acknowledgement of parentage. In the eyes of Defendant-Appellant, a fraud, as egregious as that she is accused of perpetrating is immaterial and not sufficient to prevent her from barring Plaintiff-Appellee's rights to the minor child. The abominable actions of Defendant-Appellant are part and parcel of why this action is proceeding.

For purposes of clarity, the Circuit Court's ruling, and November 1, 2011 decision by the Court of Appeals, are not final dispositive orders adjudicating the rights of the parties. Both courts were sensitive to the need to protect the rights of Plaintiff-Appellee and the minor child. The Court of Appeals agreed with the Circuit Court, that Plaintiff-Appellee was entitled to judicial protections in light of the underlying claims of fraud, the assertions of a close and lengthy father-child relationship, and the inherent rights. Noting at pg. 1, of the November 1, 2011 majority opinion (see exhibit "A"):

> ***"We conclude that the trial court had jurisdiction over the paternity suit until it determines that Bazzi lacks standing as a matter of law. However, whether Bazzi has standing is a matter that must be determined by applying the law to the relevant facts, which includes a determination that the document that Macaulay presented to the court was a duly and properly executed affidavit of parentage. The trial court elected to postpone that determination until the facts surrounding the execution of that affidavit had been developed through discovery. The trial court has the inherent authority to stay a motion to dismiss for further discovery. and, under the facts of this case, we cannot conclude that***

the trial court abused its discretion when it decided to temporarily stay resolution of Macaulay's motion until after the parties have had time to conduct discovery. We also conclude that the trial court did not abuse its discretion when it determined that the child's best interests should be safeguarded by appointment of a neutral third-party—a guardian ad litem—to represent the child during the pending litigation. For these reasons, we affirm."

Continuing at pg. 5 of the majority opinion (see exhibit "A"), the Court of Appeals further reasoned:

"Here, the trial court has jurisdiction over Bazzi's paternity claim until such time as it makes a judicial determination that Macaulay is entitled to dismissal under MCL 2.116(C)(5). But it has not made such a determination. Indeed, it specifically stated that it was neither denying nor granting Macaulay's motion to dismiss for lack of standing. Instead, the trial court determined that it was in the best interest of the child to hold Macaulay's motion in abeyance pending further limited discovery; specifically, an investigation into the nature of the relationship between Bazzi and the child after the child's birth and into the background behind the execution of the affidavit that Macaulay submitted with her motion. Thus, the allegations in Bazzi's complaint remain unrebutted—for the time being—and the court retained jurisdiction over the suit."

As amply indicated by the Court of Appeals, no final disposition of the underlying case has occurred, and in the interests of protecting the minor child, further judicial proceedings are warranted to determine if Defendant-Appellant perpetrated fraud as alleged, for the purpose of denying Plaintiff-Appellee his parental rights, and the minor child her father.

It is important public policy in the State of Michigan to protect the rights of parents and children. Plaintiff-Appellee is entitled to prosecute his action and have his day in court. To rule otherwise would result in a chilling deprivation of his rights, harm the minor child and allow a wrongdoer to benefit by virtue of egregious deception and fraud.

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

A comprehensive overview of the facts giving rise to this action is of paramount importance. As Plaintiff-Appellee alleged before the Circuit Court, and Court of Appeals, he and the minor child are victims of a horrendous fraud discovered during the pendency of this action and perpetrated by Defendant-Appellant.

Plaintiff-Appellee and Defendant-Appellant, are in their mid-thirties, and employed as a physician and attorney, respectively. Plaintiff-Appellee and Defendant-Appellant met in 2001 via the internet. An immediate friendship blossomed into an exclusive monogamous, romantic and physical relationship. By 2002, the parties exchanged religious vows to solemnize their intimate relationship. For various reasons, Plaintiff-Appellee and Defendant-Appellant never legally married.

By 2003, difficulties developed in the parties' relationship. Defendant-Appellant was exhibiting troubling behaviors, culminating in at least two (2) suicide attempts in 2003 and 2004, each following Plaintiff-Appellee's attempts to terminate their romantic relationship. In April 2004, Defendant-Appellant informed Plaintiff-Appellee that he had impregnated her. Plaintiff-Appellee confirms the timing of conception was consistent with the physical relationship engaged in by the parties.

In 2004, Defendant-Appellant was a tenant in a residence owned and occupied by Steven Szakaly, a college acquaintance. Defendant-Appellant and Steven Szakaly characterized their relationship as purely platonic. Defendant-Appellant informed Plaintiff-Appellee that she had been faithful to him during the stated 2004 time period. Available information indicates Steven Szakaly was involved in an active relationship with another woman at the time who upon

information and belief, he ultimately married.

Throughout 2004, Defendant-Appellant repeatedly asked Plaintiff-Appellee to enter into a civil marriage. Plaintiff-Appellee declined the marriage overtures, but committed to Defendant-Appellant that he intended to be an active and supportive father and co-parent for their child. From May 2004 to December 2004, Plaintiff-Appellee and Defendant-Appellant remained in regular contact. As the pregnancy progressed, Defendant-Appellant was diagnosed with a cardiac condition and other health problems. Since Defendant-Appellant was unemployed during the pregnancy, Plaintiff-Appellee provided necessary financial support including payment for a motor vehicle (resulting from Defendant-Appellant's destruction of her vehicle during one of her suicide attempts), direct monetary support, payment for Defendant-Appellant's college classes, and other financial support.[1]

On January 5, 2005, the minor child, Iris Macaulay was born. Defendant-Appellant was unmarried at the time. Defendant-Appellant telephoned Plaintiff-Appellee from Oakwood Hospital, telling him to come to the hospital and welcome their daughter. While at the hospital, Plaintiff-Appellee inquired of Defendant-Appellant what forms or documents he needed to sign regarding their child. Defendant-Appellant indicated that she had already signed the necessary documents, including those identifying Plaintiff-Appellee as the child's father. [2]

* * * *

[1] Plaintiff-Appellee continued to provide direct consistent financial support for Defendant and the minor child until Defendant suddenly vanished with the minor child in 2008.

[2] Plaintiff-Appellee was never informed by Defendant, hospital representatives, Steven Szakaly or the State of Michigan, that an Affidavit of Parentage or Birth Certificate was issued for the minor child, which identified Steven Szakaly as the father.

During 2005-2006, Plaintiff-Appellee and Defendant-Appellant agreed that Defendant-Appellant would stay home to care for the minor child, while Plaintiff-Appellee worked and assisted with financial support for mother and daughter. Defendant-Appellant remained at home, caring for the minor child and accepted all of the financial support provided by Plaintiff-Appellee.

Following the birth of the minor child, Plaintiff-Appellee and his immediate family members maintained close contact with Defendant-Appellant and the minor child. Plaintiff-Appellee exercised regular parenting time at the Defendant-Appellant's residence as well as at his parent's residence. Plaintiff-Appellee and Defendant-Appellant maintained a cooperative co-parenting relationship. Whether in public or private settings, Defendant always introduced, and referred to Plaintiff-Appellee as the minor child's father. Defendant-Appellant encouraged the father-daughter relationship and Plaintiff-Appellee's continuing close bonds with the minor child. Despite the minor child's tender age, she looked to Plaintiff-Appellee as her father. An active ongoing father-daughter relationship existed, and the minor child was an integral part of Plaintiff-Appellee's family life.

In November 2006, Plaintiff-Appellee married his current wife. Defendant was upset with Plaintiff-Appellee's decision. In early 2007, Plaintiff-Appellee informed Defendant-Appellant of his desire to expand parenting time with the minor child. Defendant objected, indicating it would be too stressful for her in light of Plaintiff-Appellee's new life. Defendant-Appellant placed no consideration on the needs of the minor child. Parenting time between Plaintiff-Appellee and the minor child continued throughout 2007 and into the early part of 2008, albeit with reduced frequency as Defendant-Appellant seemed to find convenient excuses to deny parenting time.

In early 2008, Defendant-Appellant learned that Plaintiff-Appellee and his wife were expecting a child of their own. In April 2008, without warning, Defendant-Appellant disappeared and terminated all contact with Plaintiff-Appellee. Efforts to locate the whereabouts of Defendant-Appellant and the minor child were unsuccessful. Plaintiff-Appellee even contacted Steven Szakaly on at least three (3) occasions in 2008, in the hopes he knew where Defendant-Appellant and the minor child were residing. Steven Szakaly reported that he had no information, was not in contact with Defendant-Appellant or the minor child, did not want any contact or relationship with them, but believed they had possibly moved to Huntington Woods, Michigan. Plaintiff-Appellee was unsuccessful in his efforts to locate the minor child.

On August 6, 2009, Plaintiff-Appellee filed his paternity action in the Oakland County Circuit Court. See exhibit "B". The Complaint alleged Plaintiff-Appellee was the father of the minor child, Defendant-Appellant was the mother, that the child was born out of wedlock, and that Plaintiff-Appellee had maintained a regular father-daughter relationship with the minor child. Defendant-Appellant initially evaded service, and only after contacting the State Bar of Michigan and securing member directory information were her whereabouts revealed.

Defendant-Appellant retained counsel, and responded to service of the complaint, indicating that an affidavit of parentage had been executed following the birth of the minor child, which identified Steven Szakaly as the father. Following the birth of the child, Defendant-Appellant never revealed to Plaintiff-Appellee, the existence of an affidavit of parentage (see exhibit "C"), as she consistently represented to the Plaintiff-Appellee and others, that Plaintiff-Appellee was the father, received and retained support from Plaintiff-Appellee, and encouraged the continuing father - daughter relationship.

In late 2009, Plaintiff-Appellee contacted Steven Szakaly, who again advised Plaintiff-Appellee: a) that he was ***not*** the biological father of the minor child; b) that he had been told by Defendant-Appellant that Plaintiff-Appellee was the biological father; c) that Defendant-Appellant asked him to volunteer to be named as the father on the affidavit of parentage, falsely claiming that Plaintiff-Appellee "wanted nothing to do with the child"; d) that he now realized he had been lied to and misled by Defendant-Appellant and felt sorry for Plaintiff-Appellee being deprived of a relationship with his minor daughter; e) openly apologized to Plaintiff-Appellee for his actions as he now realized the harm caused to Plaintiff-Appellee and the minor child; and f) that he had no relationship with Defendant-Appellant or the minor child, and wanted no involvement with them.[3]

On December 14, 2009, Defendant-Appellant filed her motion/brief to dismiss pursuant to MCR 2.116(c)(5), alleging that Plaintiff-Appellee was without standing pursuant to MCLA 722.714, thereby precluding the paternity action in the Oakland County Circuit Court. See exhibit "D". Plaintiff-Appellee responded, and filed a verified motion to stay the hearing on Defendant-Appellant's motion to dismiss, to appoint a Guardian ad Litem for the protection of the minor child, and to assist the Circuit Court in its review of these matters. See exhibit "E", and Exhibit "F" response. Plaintiff-Appellee set forth in his motion that barring his claims and not allowing the litigation to proceed in light of the allegations of a fraudulently procured affidavit of parentage, the recantation by Steven Szakaly, existence of a well established relationship between Plaintiff-Appellee and the minor child, and the egregious fraud perpetrated by

* * * *

[3] Communications with Steven Szakaly ceased thereafter, as he apparently sought legal advice and declined to speak further with Plaintiff-Appellee given his predicament.

Defendant-Appellant, would be a gross miscarriage of justice causing irreparable harm to Plaintiff-Appellee and the minor child and constitute a deprivation of due process and other constitutional rights and protections.

On January 27, 2010, the Circuit Court entertained the competing motions and deferred ruling on Defendant-Appellant's motion to dismiss, granted the relief sought by Plaintiff-Appellee to appoint a Guardian ad Litem to investigate the extent of the relationship between Plaintiff-Appellee and the minor child, and the significant allegations of misconduct and fraud by Defendant-Appellant in procurement of the affidavit of parentage. The Circuit Court recognized the serious nature of Plaintiff-Appellee's allegations, the alleged improper use of the Acknowledgement of Parentage Act, and the potential harm if Plaintiff-Appellee was denied the opportunity to determine the truth about the underlying claims. See exhibit "G", Tr. 1-27-10, pgs. 17-19. Defendant-Appellant objected to the Circuit Court's decision and requested a stay of proceedings pending appeal. The Circuit Court granted the stay, indicating that these issues warranted judicial review based on the allegations of fraud, claimed relationship between Plaintiff-Appellee and the minor child, potential for harm to the minor child, and other underlying facts. See exhibit "G", Tr. 1-27-10, pgs. 17-19.

On July 1, 2010, the Circuit Court entered orders to appoint a Guardian ad Litem as well as stay proceedings pending appellate review, based on the hearing conducted January 27, 2010. See exhibits "H" & "I".

On July 22, 2010, Defendant-Appellant filed an Application for Leave to Appeal the Circuit Court's order of July 1, 2010. Defendant-Appellant also filed a Claim of Appeal from the July 1, 2010 Circuit Court order, which was dismissed on August 11, 2010, with a subsequent

Motion for Reconsideration denied on October 6, 2010. On December 20, 2010, Defendant-Appellant's Application for Leave to Appeal was granted.

On September 7, 2011, oral argument was conducted by the Court of Appeals. Thereafter, On November 1, 2011, the Court of Appeals issued its opinion, see exhibit "A", affirming the Circuit Court decision to defer ruling on Defendant-Appellant's motion to dismiss, appointing a Guardian ad Litem to investigate the underlying facts and circumstances, and for discovery.

ARGUMENT

I. Plaintiff-Appellee submits that leave should not be granted to review the decisions of the Circuit Court (July 1, 2010) and Court of Appeals (November 1, 2011), concerning the following matters, and that the Circuit Court should forthwith be permitted to effectuate its order as previously entered. In reviewing the Application for Leave, this Court must consider:

A. The Circuit Court and Court of Appeals properly determined that Plaintiff-Appellee had sufficient standing to maintain his claims under the Paternity Act in light of the underlying facts, including allegations of fraudulent conduct in Defendant-Appellant's procurement of an Affidavit of Parentage, and that it was proper to appoint a Guardian ad Litem and permit discovery to assist the Circuit Court in making its ultimate determination.

Plaintiff-Appellee filed his paternity action in good faith, to secure a judicial declaration as to parentage of the minor child. Defendant-Appellant responded that Plaintiff-Appellee lacked standing in light of the acknowledgement of parentage previously undisclosed to Plaintiff-Appellee. The Circuit Court and Court of Appeals recognized the predicament confronted by Plaintiff-Appellee, and applying sound logic to the facts, wisely decided that it was appropriate for the Circuit Court to retain jurisdiction of the case and permit necessary investigations into the allegations of fraud in the procurement of the acknowledgement of parentage and the scope of the established parental relationship between father and daughter.

Plaintiff-Appellee submits that the Michigan legislature never intended that an acknowledgement of parentage be fraudulently procured and then utilized as a weapon to wrongfully deprive a legitimate biological parent of rights. To enforce the Paternity Act or Acknowledgement of Parentage laws as written in the face of such flagrant fraudulent acts, or that fraud prohibit the rights of an innocent biological father, was not intended by the legislature. Defendant-Appellant clearly seeks to preclude Plaintiff-Appellee's rights to judicial relief, and is hiding behind her fraudulent conduct in an effort to deny Plaintiff-Appellee access to judicial

protections and relief. Such conduct on the part of the Defendant-Appellant cannot be tolerated.

By way of background, Michigan's Paternity Act, MCLA 722.711 et seq., grants jurisdiction to circuit courts to render judicial determinations as to paternity. *Barnes* v *Jeudevine*, 475 Mich 696, 702; 718 NW2d 311 (2006). Relief under the Paternity Act may be sought by the mother, father or Family Independence Agency of a child born out of wedlock. A child born out of wedlock, is specifically defined as "a child begotten and born to a woman who was not married from the conception to the date of birth of the child, or a child that the court has determined to be a child born or conceived during a marriage but not the issue of that marriage." MCLA 722.711(a); *In re KH*, 469 Mich 621, 631-632; 677 NW2d 800 (2004).

On August 6, 2009, Plaintiff-Appellee filed his complaint seeking a judicial declaration of paternity of the minor child, Iris Macaulay. See *Aichele* v *Hodge*, 259 Mich App 146, 154-155; 673 NW2d 452 (2003). Immediate action was then taken to serve process on Defendant-Appellant and proceed to secure a judicial declaration. The Court of Appeals found that the Circuit Court was vested with jurisdiction based on the filing of Plaintiff-Appellee's complaint. See exhibit "A", majority opinion pg. 5. Also see *Altman* v *Nelson*, 197 Mich App 467,475-477; 495 NW2d 826 (1992).

In Michigan, there exists an alternative statutory mechanism by which persons can establish and designate a child's father without resorting to judicial intervention, i.e., the Acknowledgement of Parentage Act. MCLA 722.1011. The Paternity Act, MCLA 722.711 et seq., is meant to be read *in pari materia* with the Acknowledgement of Parentage Act, MCLA 722.1001 et seq. The acts read together indicate that there cannot be two legal fathers for one (1) child. *Sinicropi* v *Mazurek*, 273 Mich App 149, 160; 729 NW2d 256 (2006).

Defendant-Appellant contends that Plaintiff-Appellee lacks standing to prosecute his paternity claim in the Circuit Court or present any other claims and relies on MCLA 722.714(2), given a previous acknowledgement of paternity. MCLA 722.714(2) provides:

> *"An action to determine paternity shall not be brought under this act if the child's father acknowledges paternity under the acknowledgment of parentage act, or if the child's paternity is established under the law of another state."*

Defendant-Appellant alleges that Steven Szakaly is the only recognized father of the minor child, and that Plaintiff-Appellee cannot as a putative father, present a case to the contrary. The express fraudulent misrepresentations made by Defendant-Appellant to Plaintiff-Appellee and third parties regarding parentage of the minor child, commencing in 2004 and continuing for the next four (4) plus years of the minor child's life, were meant to mislead Plaintiff-Appellee, who had absolutely no knowledge of the fraudulently procured acknowledgement of parentage at the time he filed his paternity action.

MCLA 722.1003, governs acknowledgment of parentage, and provides:

> *" (1) If a child is born out of wedlock, a man is considered to be the natural father of that child if the man joins with the mother of the child and acknowledges that child as his child by completing a form that is an acknowledgment of parentage.*
>
> *(2) An acknowledgment of parentage form is valid and effective if signed by the mother and father and those signatures are notarized by a notary public authorized by the state in which the acknowledgment is signed. An acknowledgment may be signed any time during the child's lifetime.*
>
> *(3) The mother and father shall be provided a copy of the completed acknowledgment at the time of signing."*

As first learned during the pendency of proceedings before the Circuit Court, on January 6, 2005, Defendant-Appellant grossly misrepresented factual matters, to deceive Steven Szakaly to acknowledge parentage. See exhibit "C". The affidavit includes an acknowledgment by the signatories that "*To the best of my knowledge, the above information is true*". Based on the

historical representations made by Defendant-Appellant to Plaintiff-Appellee, family members and third parties, and the more recent representations/recantations made by Steven Szakaly to Plaintiff-Appellee, there is sufficient reason to believe that the acknowledgement of parentage was knowingly, intentionally and fraudulently executed for the purpose of depriving Plaintiff-Appellee of his lawful rights to the minor child. Contrary to Defendant-Appellant's assertion in her pending Application for Leave (at pg. viii), Plaintiff-Appellee clearly challenged the validity of the acknowledgment of parentage before the Circuit Court, a fact noted by the Court of Appeals. See exhibit "A", majority opinion pgs. 2, 3, 5, 6, 7 & 8.

Revocation of an acknowledgement of parentage is available in Michigan, however, Plaintiff-Appellee is not presently a party within the classification of persons permitted to seek such relief. MCLA 722.1011, provides:

> *"(1) The mother or the man who signed the acknowledgment, the child who is the subject of the acknowledgment, or a prosecuting attorney may file a claim for revocation of an acknowledgment of parentage. If filed as an original action, the claim shall be filed in the circuit court of the county where either the mother or man resides. If neither of those parties lives in this state, the claim shall be filed in the county where the child resides. A claim for revocation may be filed as a motion in an existing action for child support, custody, or parenting time in the county where the action is and all provisions in this act apply as if it were an original action.*

MCLA 722.1011, sets forth the basis for a court to consider revocation and the process involved in securing such relief:

> *(2) A claim for revocation shall be supported by an affidavit signed by the claimant setting forth facts that constitute 1 of the following:*
>
> *(a) Mistake of fact.*
>
> *(b) Newly discovered evidence that by due diligence could not have been found before the acknowledgment was signed.*

(c) Fraud.

(d) Misrepresentation or misconduct.

(e) Duress in signing the acknowledgment.

(3) If the court finds that the affidavit is sufficient, the court may order blood or genetic tests at the expense of the claimant, or may take other action the court considers appropriate. The party filing the claim for revocation has the burden of proving, by clear and convincing evidence, that the man is not the father and that, considering the equities of the case, revocation of the acknowledgment is proper.

(4) A copy of the order of revocation shall be forwarded by the clerk of the court to the state registrar. The state registrar shall vacate the acknowledgment and may amend the birth certificate as prescribed by the order of revocation.

(5) Whether the claim for revocation under this act arises as an original action or as a motion in another action, the prosecuting attorney, an attorney appointed by the county, or an attorney appointed by the court is not required to represent either party regarding the claim for revocation.

Defendant-Appellant claims the Circuit Court erred in not immediately granting her motion to dismiss, and permitting Plaintiff-Appellee's paternity action to proceed, based on her belief that there was no standing in light of Steven Szakaly's acknowledgment of parentage. This argument assumes the affidavit of parentage is valid. Given the representations made by Defendant-Appellant to Plaintiff-Appellee, and to Steven Szakaly, the validity of the affidavit of parentage is in question based on the allegations of fraud, and must be subjected to heightened scrutiny. Defendant-Appellant wants no further inquiry into the acknowledgement of parentage, given her motivation to preclude Plaintiff-Appellee from the minor child's life. The Circuit Court understood the concerns raised by Plaintiff-Appellee and granted relief, including appointment of a Guardian ad Litem to protect the minor child and investigate the underlying claims. See exhibit "G", Tr. 1-27-10, pgs. 17-18. The Court of Appeals had similar concerns as to the validity of the underlying circumstances giving rise to the affidavit of parentage, indicating:

"In this case, Macaulay claims that there is a valid affidavit of parentage establishing the paternity of the child. If this is true, then she would be entitled to the dismissal of Bazzi's suit because he would lack standing to bring a paternity suit. See MCL 722.714(2). However, MCL 722.714(2) refers to an acknowledgment of paternity under the acknowledgement of parentage act. See MCL 722.1001 et seq. That is, the paternity must have been established in compliance with all the provisions of that act. A man acknowledges that he is the natural father of a child, if he "joins with the mother of the child and acknowledges that child as his child by completing a form that is an acknowledgement of parentage." MCL 722.1003(1). In order to be valid, the acknowledgement must be signed by the mother and the father and notarized. MCL 722.1003(2). The acknowledgement must contain certain provisions, see MCL 722.1007, and must be filed, see MCL 722.1005. Although the affidavit of parentage appears valid on its face, and would normally be sufficient to sustain a motion for summary disposition under MCL 2.116(C)(5), it is possible that further discovery will reveal evidence tending to establish that the affidavit is not valid under the acknowledgement of parentage act..."

See exhibit "A", majority opinion pgs. 6-7.

The Court of Appeals has previously opined that an acknowledgement of parentage must be "properly executed" to be valid. *Sinicropi I, supra.* What is a properly executed acknowledgement of parentage? Plaintiff-Appellee submits it is one not tainted with, or arising by means of fraud or other misconduct. The execution of an affidavit of parentage for purposes of acknowledging parentage based on fraudulent misrepresentations, cannot be valid. See exhibit "A", majority opinion, pg. 8. The conduct attributed to Defendant-Appellant is troubling and was undertaken for the purposes of depriving Plaintiff-Appellee of his parental rights. Plaintiff-Appellee has consistently alleged that the acknowledgement of parentage resulting in the issuance of the affidavit of parentage was fraudulently procured and executed, and should be deemed ineffective and void. See exhibits "E" & "F". The Circuit Court and Court of Appeals understood the significance fraud would have on the acknowledgement of parentage.

While Plaintiff-Appellee is not identified as a party permitted to seek revocation of the acknowledgement of parentage, given the specifics of his claims in this action, if he was deemed

such a party, or based on actions taken by the Guardian ad Litem, the Circuit Court could order scientific testing to determine parentage as a requisite to revocation. The Circuit Court would have to find by clear and convincing evidence that revocation was proper considering the equities of the case. *Killingbeck* v *Killingbeck,* 269 Mich App 132, 144; 711 NW2d 759 (2005). Defendant-Appellant has no reason to fear such scrutiny and investigations, as she most certainly would want to verify the identity of her child's biological father. In light of Defendant-Appellant's efforts to frustrate this process, it should be inferred she perpetrated the fraudulent procurement of the affidavit of parentage.

The facts of the instant case demonstrate the quandary faced by Plaintiff-Appellee. While he brought a paternity action in good faith, and without knowledge of any prior acknowledgement of parentage, Defendant-Appellant attacked his standing under MCLA 722.714(2), and asserts that that revocation of the acknowledgement of parentage is not available to him under MCLA 722.1011. Defendant-Appellant's reliance on these positions is a blatant effort to thwart any investigation and inquiry into the underlying facts and forever bar and destroy Plaintiff-Appellee's relationship with the minor child. Defendant-Appellant is in essence being shielded by the fraudulent acts she perpetrated on Plaintiff-Appellee, the minor child, Steven Szakaly, the State of Michigan and now the courts. Clearly, the legislature never intended to implement a statutory scheme which would bar a biological father's standing as a consequence of duplicity and fraud perpetrated by the birth mother with the intention of precluding the rightful father's parental rights. If the Paternity Act and Acknowledgement of Parentage Acts preclude Plaintiff-Appellee's right to file a claim establishing him as the biological father, then, to the extent they do so, they should be held to be unconstitutional. The minor child is at a minimum

entitled to these protections. If Steven Szakaly is to be believed, the minor child is being deprived of a father, in this instance her biological father and will suffer an extreme detriment throughout her life. The Court of Appeals had the same concerns. See exhibit "A", majority opinion, pgs. 7-8.

The issue of standing was recently addressed by this court in *Lansing Schools Ed Assoc* v *Lansing Board of Ed*, 487 Mich 349; 792 NW2d 686 (2010), which examined the practical impact on both public and private causes of action, and whether a litigant had a special injury or right or substantial interest which would allow standing. The *Lansing* decision witnessed a departure from prior concepts of standing, with this Court indicating in part that a standing doctrine is designed to assess whether a litigant has an interest in the issue, which is sufficient to ensure sincere and vigorous advocacy. *Detroit Fire Fighters Ass'n* v *Detroit*, 449 Mich 629, 633; 537 NW2d 436 (1995). This Court found that Michigan courts have, for an extended period of time, applied a flawed standing rule that is overly restrictive and limited the ability of plaintiff litigants. *Id* at pgs. 9-16. In determining that an expanded and prudential approach to standing was warranted, the court stated at 372:

> *"Under this approach, a litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant."*

The inquiry into standing as defined by *Lansing*, is independent of whether or not the requested remedy is available. See *Department of Environmental Quality* v *Mard Enterprises*, unpublished opinion of the Court of Appeals, issued January 18, 2011 (Docket Nos. 291081,

291082, 291083 and 291084), analyzing *Lansing Schools*, *supra* at 357-58 and relying on a "limited, prudential approach".

Defendant-Appellant adamantly objects to Plaintiff-Appellee having standing to prosecute his claims given the prior acknowledgement of parentage, albeit alleged to have been fraudulently procured, and the limited class of persons deemed to have statutory standing. Defendant-Appellant's argument that Plaintiff-Appellee lacks standing relies on *Miller* v *Allstate Ins. Co.*, 481 Mich. 601; 751 NW2d 463 (2008). Defendant-Appellant's references to that case rely on its interpretation of *Rohde* v *Ann Arbor Public Schools*, 479 Mich 336; 737 NW2d 158 (2007) and *Nat'l Wildlife Federation* v *Cleveland Cliffs Iron Co*, 471 Mich 608; 684 NW2d 800 (2004). Both *Rohde* and *Nat'l Wildlife* have since been explicitly overruled by this Court's decision in *Lansing*, *supra* at 371, to the extent of requiring a litigant to establish standing requirements when declaratory relief is sought, and Defendant-Appellant's reliance on them is thus without foundation.

Defendant-Appellant is adamant that based on standing alone, the Circuit Court had no jurisdiction or basis to allow the case to proceed, for any purpose whatsoever. The Circuit Court correctly determined that it had jurisdiction of this case and that Plaintiff-Appellee had sufficient standing because of the special injury, rights and substantial interests at issue. The Court of Appeals likewise found merit in that position given the underlying facts and circumstances, noting

> ***"However, the mere filing of her motion to dismiss for lack of standing did not establish that Bazzi actually lacked standing and did not divest the trial court of jurisdiction; Bazzi's standing remains and the trial court retains jurisdiction over Bazzi's suit.***
>
> ...

Here, the trial court has jurisdiction over Bazzi's paternity claim until such time as it makes a judicial determination that Macaulay is entitled to dismissal under MCL 2.116(C)(5). But it has not made such a determination. Indeed, it specifically stated that it was neither denying nor granting Macaulay's motion to dismiss for lack of standing. Instead, the trial court determined that it was in the best interest of the child to hold Macaulay's motion in abeyance pending further limited discovery; specifically, an investigation into the nature of the relationship between Bazzi and the child after the child's birth and into the background behind the execution of the affidavit that Macaulay submitted with her motion."

See exhibit "A", majority opinion, pg. 5.

The Court of Appeals further took exception with Defendant-Appellant's steadfast position that the Circuit Court had no discretion to delay ruling on her motion to dismiss, indicating at exhibit "A", pg. 6., of the majority opinion:

"Although Macaulay framed her claim of error on appeal in terms of standing and jurisdiction, her real claim of error is that the trial court should not have held her motion in abeyance. A trial court has the inherent authority to control the progress of a case. See MCR 1.105; MCR 2.401; see also People v Grove, 455 Mich 439, 470; 566 NW2d 547 (1997) ("Optimum service to the public, to victims, witnesses, jurors, litigants, and to counsel mandates that trial judges have the authority and discretion to manage dockets. The interplay between MCR 2.401 and MCR 6.001 provides for such efficient management, while allowing judges the flexibility to exercise their discretion appropriately, given the circumstances of an individual case."). And we conclude that this inherent authority includes the discretion to hold a motion in abeyance."

The Court of Appeals also found that Defendant-Appellant failed to properly address the issue of the Circuit Court's deferral in ruling on the motion to dismiss. Such failure to preserve the claim of error resulted in an abandonment of the issue. See *Chen v Wayne State, University,* 284 Mich App 172, 206-207; 771 NW2d 820 (2009). Additionally, the Court of Appeals agreed that the Circuit Court had sufficient discretion in management of the case and did not commit error by holding the motion to dismiss in abeyance. See exhibit "A", majority opinion, pg. 6.

Defendant-Appellant should not now be heard to allege that the Michigan legislature intended to preclude a biological father from a relationship with his child in the face of fraud, in this instance a blatant and outrageous act of fraud. A fraudulently procured acknowledgement of parentage should not abet Defendant-Appellant in her efforts to eradicate parental rights. The Circuit Court was cognizant of this fact, and in the face of allegations of egregious fraudulent acts, determined that exceptional circumstances existed, including Plaintiff-Appellee's established parental relationship and bonds with the minor child, payment and acceptance of support, and found that it had at least limited jurisdiction to investigate matters so that a more complete record could be developed, noting:

> *"...One is there may – and I have no idea whether it's true or not – may be the fact that we have somebody who – after three and a half years actually acted as the father of this child supporting him, visiting and being with the child. In addition to that, we may have – I have no idea whether it is true not, fraud in that when the Acknowledgement of Paternal was signed and the birth certificate was issued, with the person's name on it, that it was a fraudulent act..."*

See exhibit "G", Tr. 1-27-10, p. 17.

The Court of Appeals concurred that the Circuit Court had the authority to proceed in accordance with its ruling on January 27, 2010. See exhibit "A", majority opinion, pg. 1.

B. The Court of Appeals was correct in ruling that the Circuit Court did not exceed its authority in permitting the action to proceed, and defer ruling on Defendant-Appellant's motion to dismiss, appoint a Guardian ad Litem, and retain jurisdiction based on the underlying facts and circumstances of the case

The Circuit Court correctly deferred ruling on Defendant-Appellant's motion to dismiss based on the facts and circumstances of this case, in particular, the allegations of fraud in connection with the acknowledgement of parentage, and the significant relationship between Plaintiff-Appellee and the minor child prior to Defendant-Appellant's intentional severing of ties.

The Circuit Court analyzed the facts and circumstances presented and formulated a course of action to protect the minor child. The only relief granted at this juncture was to appoint a Guardian ad Litem to investigate the allegations of fraud, the historical parenting relationship, permit discovery, and defer ruling on the pending motion to dismiss. The Circuit Court was keenly aware of the interplay between the Paternity and Acknowledgement of Parentage Acts, sought to protect the minor child, and considered the same in making its ruling on the competing motions, stating:

> *"But I do think despite the Act, that we do have sufficient allegations here that should be investigated on behalf of the child, not on behalf of this man, and not on behalf of the mother, but on behalf of the child. And I will appoint a guardian ad litem to do that investigation and determine whether or not, in the guardian ad litem's opinion, we should move forward to see whether there was or wasn't fraud, and see whether some kind of a established custodial and support relationship with the petitioner, here have. .. I'm not saying what's going to happen in the future. But I do think before I dismiss this matter off hand, which is basically what the statute says, that we may have sufficient grounds that we need to go further than merely dismissing off hand and man have somebody investigate on behalf of the child. So I'll appoint a guardian ad litem to do that and only be that the Court is finding that it has temporary jurisdiction. I'm not going to find here today that you're right to have it outright dismissed, but I am going to appoint a guardian ad litem to investigate."*
>
> See exhibit "G", Tr. 1-27-10, pgs. 18-19.

The Court of Appeals concurred that the appointment of a Guardian ad Litem was appropriate and that additional inquiry into the circumstances surrounding the acknowledgement of parentage were warranted:

> ***"We are moreover untroubled by Macaulay's claims that the trial court is essentially enabling Bazzi to collaterally attack the validity of the affidavit of parentage through the appointment of a guardian ad litem. Macaulay correctly notes that a putative father cannot challenge the validity of an affidavit of parentage. See MCL 722.1011(1). Nevertheless, the acknowledgement of parentage act clearly provides that the child does have the right to challenge the validity of an affidavit of parentage on the basis of—among other things—fraud, misrepresentation, or misconduct. See MCL 722.1011(1), (2). And nothing within the acknowledgment of parentage act prevents a trial court from appointing a next friend to pursue such a claim on behalf of a minor child as part of a paternity suit. See MCR 2.201(E)(2) (authorizing trial courts to appoint a next friend for a minor). Indeed, the acknowledgement of parentage act provides that a person who has standing may challenge the validity of affidavit of parentage with a motion in "an existing action for child support, custody, or parenting time" and all the provisions of the acknowledgement of parentage act "apply as if it were an original action." MCL 722.1011(1). Because Bazzi's paternity claim is a type of suit for custody and parenting time, if the guardian ad litem returns with a recommendation that the trial court appoint a next friend to challenge the validity of the affidavit of parentage, there is nothing to preclude the trial court from doing so."***

See exhibit "A", majority opinion pg. 8.

The Circuit Court's January 27, 2010 ruling, considered statutory construction, as well as the cannons of common sense in applying said statutes in light of the allegations. See *Michigan Basic Property Insurance Assn* v *Office of Financial and Insurance Regulation*, 288 Mich App 552: ___ NW2d ___ (2010). Recognizing that it should interpret the statutes to ascertain the intent of the legislature, *In re McEvoy*, 267 Mich App 55, 59; 704 NW2d 78 (2005), the Circuit Court considered the purpose of the statutes, and harm they were designed to protect against or otherwise remedy, in deciding what was a reasonable construction under the circumstances. *Klida* v *Braman*, 278 Mich App 60; 748 NW2d 244 (2008), lv den 483 Mich 891; 759 NW2d

888 (2009), citing *Marquis* v *Hartford Accident & Indemnity (After Remand)*, 444 Mich 638; 513 NW2d 799 (1994). Courts can apply statutes in such a manner to avoid unreasonable or unintended consequences. *Dybata* v *Wayne County*, 287 Mich App 635; 791 NW2d 499 (2010). Judicial construction of a statute is required if a literal construction of the statute would produce unreasonable and unjust results inconsistent with the purpose of the statute. *Hamilton* v *AAA Michigan*, 248 Mich App 535; 639 NW2d 837 (2001).

The Court of Appeals agreed with the Circuit Court's cautious exercise of its authority, recognizing the importance of the Plaintiff-Appellee's claims and potential for irreparable harm to Plaintiff-Appellee and the minor child, and the best interest of the minor child. See exhibit "A", majority opinion, pg. 8. Given the underlying circumstances and Defendant-Appellant's attempts to preclude Plaintiff-Appellee's parental rights, both the Circuit Court and Court of Appeals acted in a proper judicial manner. It is worthy of note that Plaintiff-Appellee reported in the lower courts that he contacted the Oakland County Prosecutor's Office and requested the prosecutor to intervene in this case on behalf of the minor child. Unfortunately, the prosecutor was unable to accommodate the request due to budgetary constraints. Based on the relief granted to date, if the Circuit Court ultimately determines upon the conclusion of an investigation by the Guardian ad Litem, other inquiry, or upon hearing that Defendant-Appellant perpetrated frauds in procuring and filing of the affidavit of parentage, the prosecuting attorney may initiate revocation of the acknowledgement of parentage on behalf of the minor child. MCLA 722.1011(1) (c) & (d).

Equitable considerations also merit a careful examination of the underlying events and ability of the Circuit Court to remedy fraudulent acts which have victimized Plaintiff-Appellee and the minor child. The Court of Appeals in *Sinicropi* v *Mazurek*, 279 Mich App 455; 760

NW2d 520 (2008), lv den 482 Mich 1012; 761 NW2d 90 (2008) considered the ability to afford equitable relief and what circumstances should warrant assistance, stating at 465-466:

> *"First, although neither case law nor the statute defines "the equities" as that term appears in MCL 722.1011(3), the equitable functions of a court are well-established in our jurisprudence. For example, MCL 600.601 "contains a broad grant of all equity powers traditionally exercised in chancery to the circuit courts." Lester v Oakland Co Sheriff, 84 Mich App 689, 695; 270 NW2d 493 (1978). Trial courts are accustomed to fashioning equitable resolutions because "[i]t is the historic function of equity to give such relief as justice and good conscience require." Levant v Kowal, 350 Mich 232, 241; 86 NW2d 336 (1957). Here, the trial court drew on virtually all the traditional equitable principles applicable in family-law cases: the best interest of the child, the fitness of the competing parents, and the past relationships of the parties. Additionally, the trial court entertained testimony from Sinicropi concerning Noah's interest in and awareness of his genetic heritage, and expert opinion regarding the existing emotional bonds and family dynamics. In our view, highly charged and intimate circumstances such as these require the flexibility and practicality of a traditional equitable approach. Equity aims to "do complete justice by embracing the whole subject, deciding upon and settling the rights of all persons interested in the subject-matter, to make performance of the orders perfectly safe to those who have to obey it, and to prevent further litigation." Ladas v Psiharis, 241 Mich 101, 106; 216 NW 458 (1927). Had the Legislature intended to impose a rigid template on this decision-making process, it would have done so. Sparks v Sparks, 440 Mich 141, 158-159; 485 NW2d 893 (1992)."*

A circuit court should be accorded considerable latitude in fashioning equitable remedies. *Governdale* v *City of Owosso*, 59 Mich App 756, 762; 229 NW2d 918 (1975). Plaintiff-Appellee is entitled to the protections of equity to safeguard his parental rights and prevent a gross miscarriage of justice based on Defendant-Appellant's procurement of an affidavit of parentage.

The Court of Appeals agreed that the jurisdiction exercised by the Circuit Court, was permissible in allowing for proceedings to continue, to investigate those matters addressed by Plaintiff-Appellee. See exhibit "A", pgs. 1, 4-8.

C. **Under the circumstances of the pending action, the Court of Appeals found that the Circuit Court had discretion and jurisdiction to determine if the Acknowledgement of Parentage relied on by Defendant-Appellant was fraudulently procured and executed, and subject to revocation.**

Prior to the minor child's birth on January 5, 2005, and continuing through at least April 2008, Defendant-Appellant openly publicized to Plaintiff-Appellee, his family and third parties, that Plaintiff-Appellee was the biological father of the minor child. Plaintiff-Appellee filed his paternity action seeking a formal judicial adjudication of his parental rights to the minor child, without knowledge Defendant-Appellant had procured and filed an affidavit of parentage identifying Steven Szakaly as the natural father of the minor child. The Court of Appeals observed that Plaintiff-Appellee was "completely blind-sided" by the belated assertion. See exhibit "A", majority opinion, pg. 7.

At present, notwithstanding the allegations of fraud and recantation by Steven Szakaly to Plaintiff-Appellee, in the eyes of the law Steven Szakaly is deemed to be the "natural father" of the minor child. *Sinicropi I, supra.*

Plaintiff-Appellee asserted before the Circuit Court and Court of Appeals that the affidavit of parentage relied on by Defendant-Appellant was fraudulently procured, had been verbally repudiated by Steven Szakaly when he learned of the Circuit Court proceeding, and should be deemed void ab initio. As indicated above, Defendant-Appellant has throughout these proceedings, rejected any relationship between Plaintiff-Appellee and the minor child. See exhibits "E" & "F". Yet in January 2005, Defendant-Appellant assured Plaintiff-Appellee she had executed all necessary documentation to establish he was the minor child's biological father. The representations and joint cooperative parenting continued into 2008. Defendant-Appellant cannot, and should not be allowed to now to deprive Plaintiff-Appellee of his parental rights. See

Nygard v *Nygard*, 156 Mich App 94, 99-100; 401 NW2d 323 (1986). The fraudulent acts of the Defendant-Appellant must not be permitted to act as a barrier to the rights of biological father, who is as much of a victim as the minor child.

The Circuit Court recognized that there are genuine and material issues whether Defendant-Appellant and Steven Szakaly properly executed an affidavit of parentage which led to the acknowledgement of parentage, and was concerned that Plaintiff-Appellee's rights to the minor child were jeopardized based on the allegations of fraud in the execution of the affidavit of parentage. See exhibit "G", Tr. 1-27-10 pgs. 17-19. The Court of Appeals raised the same concerns. See exhibit "A", majority opinion, pgs. 7-8. No error was found in the Circuit Court's decision to defer ruling on Defendant-Appellant's motion to dismiss, pending further investigation into the underlying claims. See exhibit "A", majority opinion, pgs. 5-8.

The Circuit Court's motivation for appointment of a Guardian ad Litem was evident, in that it desired to investigate the serious allegations at hand. The Circuit Court, acting within its discretion, wisely appointed a Guardian ad Litem, and as the Court of Appeals noted at exhibit "A", majority opinion, pg. 8:

> "***Under these circumstances, the trial court could reasonably conclude that a neutral third-party—a guardian ad litem—should be appointed to ensure that the child's interests were adequately represented and to make recommendations to the court with regard to what might be in the child's best interest*".**

Defendant-Appellant's opposition to the Circuit Court's decision to appoint a Guardian ad Litem to assist in the investigation of fraud in the procurement of the affidavit of parentage, as a new judicially created exception to the Paternity Act, must be dismissed. The Court of Appeals agreed with the Circuit Court as to appointment of a Guardian ad Litem, finding in part that it was in the best interests of the minor child in this domestic proceeding. See exhibit "A", majority

opinion, pgs. 7-8. The ability to conduct proper investigations in this matter will allow the Circuit Court to bring finality to the proceedings, as confirmation of a fraudulent acknowledgement of parentage will allow for nullification of the instrument, or is Defendant-Appellant is correct in her stance, a dismissal of the action. In either instance discovery and investigations are required to determine precisely what transpired in January 2005 and thereafter.

The Michigan legislature never intended for a fraudulently procured acknowledgement of parentage to be deemed valid, such that it would forever preclude the legal rights of an honest, trusting, devoted and involved biological father. Examination of case law concerning an affidavit of parentage makes reference to properly executed affidavits, as this court noted in *Hoshowski* v *Genaw*, 230 Mich App 498, 499; 584 NW2d 368 (1998):

> *"We hold that the parties' properly executed affidavit of parentage establishes plaintiff as a parent under the Revised Probate Code..."* (emphasis added).

Also see exhibit "A", majority opinion, pgs. 6-7.

It is long standing precedent in common law, statutes and under the Michigan Court Rules that fraud can vitiate acts based on the materiality of the wrongdoing. By way of example, documents such as deeds, induced by fraud and deceit, are subject to equitable relief and cancellation. *Richardson* v *Ball*, 300 Mich 424; 2 NW2d 449 (1942). Michigan courts have held that with fraudulent instruments such as deeds, each case is deserving of review to determine if the conveyance should be set aside for undue influence or fraud. *Berthuine* v *Scewczyk*, 317 Mich 275; 26 NW2d 770 (1947). A marriage can be voidable on the grounds of fraud, based on the wrongful conduct of a party. *Smith* v *Smith*, 51 Mich 607; 17 NW 76 (1883). Fraud justifies relief from a Judgment of Divorce, including a judgment procured by fraud. *Hoven* v *Hoven*, 9 Mich App 168; 156 NW2d 65 (1968), see also MCR 2.612(C)(1)(c). Fraudulent statements regarding

paternity can be grounds to annul a marriage. *Gard* v *Gard*, 204 Mich 255; 169 NW 908 (1918). Certainly, fraud, perpetrated to induce execution of an affidavit of parentage is sufficient grounds to nullify the same. See MCLA 722.1011(1). As alleged by Plaintiff-Appellee, the fraud attributed to Defendant-Appellant is extreme, and clearly if confirmed, would meet the threshold to revoke the acknowledgement of parentage. The affidavit of parentage should be deemed void ab initio in the same manner as a fraudulently induced marriage is voided. *Yanoff* v *Yanoff*, 237 Mich 383, 211 NW 735 (1927).

In her Application for Leave, Defendant-Appellant concludes that the affidavit of parentage is valid on its face, and that no inquiry is warranted. This ignores the effect fraud would have as to the legality of such instrument. If Defendant-Appellant comes before any court in this matter with unclean hands, as the knowing procurer of an affidavit of parentage by misconduct or fraud, the court, acting in law or equity should not insulate or protect Defendant-Appellant, and Plaintiff-Appellee and the minor child should not sustain further harm from such unlawful acts. *Rose* v *National Auction Group,* 466 Mich 453; 646 NW2d 455 (2002). False swearing, misconduct or fraud in procuring and executing the affidavit of parentage, by concealment of essential material facts, by lies and deceit, or executing the same to carry out Defendant-Appellant's willful plan to extinguish Plaintiff-Appellee's parental rights, are acts of fraud.

A fraud is perpetrated on the court when some material fact is concealed from the court or when some material misrepresentation is made to the court. *MacArthur* v *Miltich*, 110 Mich App 389, 391; 313 NW2d 297 (1981), *superceded on other grounds, Kiefer* v *Kiefer*, 212 Mich App 176; 536 NW2d 873 (1995). Defendant-Appellant's affirmative representations to the Circuit

Court, Court of Appeals and now this Court that a valid affidavit of parentage exists, has resulted in her continuing perpetration of a fraud on Plaintiff-Appellee, the minor child and the courts. *Matley* v *Matley* (On Remand), 242 Mich App 100; 617 NW2d 718 (2000).

It is well established law that under circumstances where fraud is alleged in the underlying acts, an evidentiary hearing is necessary to determine the nature and existence of the fraud, so that the extent of the fraud can be meaningfully determined. See *Williams* v *Williams*, 214 Mich App 391; 542 NW2d 892 (1995), *Parlove* v *Klein*, 37 Mich App 537, 544-45; 195 NW2d 3 (1972), *superceded on other grounds, Kiefer, supra.* The Circuit Court's ruling on January 27, 2010, was intended to set in place a mechanism to investigate and determine in part, how and what fraud was committed in procuring the affidavit of parentage, and the impact on the minor child and Plaintiff-Appellee. Allegations concerning fraudulent claims of paternity are exactly the sort that should give rise to the need for an evidentiary hearing. *Martin* v *Martin*, 22 Mich App 39; 176 NW2d 694 (1970). It is an abuse of discretion for a trial judge to dismiss allegations of fraud on the court without hearing evidence as to the allegations. *Rapaport* v *Rapaport*, 185 Mich App 12; 460 NW2d 388 (1990).

The instant proceeding must be permitted to proceed to a formal adjudication. While Defendant-Appellant claims that Plaintiff-Appellee has no standing to seek revocation of the affidavit of parentage he alleges was procured by fraud, if Plaintiff-Appellee is correct, Defendant-Appellant stands behind a fraudulently procured affidavit of parentage for the purpose of barring Plaintiff-Appellee's parental rights. Neither the law nor equity can support such a grievous concept. In light of the presumption of parentage upon proper execution of the affidavit as provided for in MCLA 722.714(2), the occurrence of the fraud should nullify its existence.

Where a fraud has been committed, the courts should restore the parties to the position they would be in the event the fraud had not occurred. *Herpolsheimer* v *A.B. Herpolsheimer Realty Co*, 344 Mich 657; 75 NW2d 333 (1956). The appropriate remedy must be to vacate any legal rights in favor of Steven Szakaly established by virtue of the fraud. See *De Haan* v *De Haan*, 348 Mich 199; 82 NW2d 432 (1957); *Lake States Ins. Co* v *Wilson*, 231 Mich App 327, 331; 586 NW2d 113 (1998); see also *Hanold* v *Bacon*, 36 Mich 1 (1877) (Cooley, J.) (stating that a court will refuse to honor any rights obtained via fraud).

It is imperative that the Circuit Court be permitted to follow through with its rulings, initiate and complete the investigations and proceed to hearing as a requisite to declaring Plaintiff-Appellee's parental rights to the minor child.

D. Plaintiff-Appellee is entitled to constitutional protections to safeguard his liberty interests in the relationship with the minor child.

Plaintiff-Appellee filed his paternity action to obtain a declaratory judgment that he is the biological father of the minor child, and entitled to exercise custody, parenting and other rights. The minor child was born out of wedlock, and unlike other cases, this is not one where Plaintiff-Appellee is being pursued by the courts or Defendant-Appellant for his failure to meet parental obligations. Plaintiff-Appellee is fighting to preserve, protect and maintain a significant relationship which Defendant-Appellant is attempting to eradicate. Defendant-Appellant has moved on in her life, and seeks to terminate any reference to Plaintiff-Appellee. Time is not on Plaintiff-Appellee's side as the child matures.

Plaintiff-Appellee argued before the Circuit Court and Court of Appeals that he has a protected constitutional liberty interest in his relationship with the minor child, thereby entitling him to due process of law. Defendant-Appellant disagrees with Plaintiff-Appellee's constitutional protection argument and in her Application for Leave (at pg. 21) cites *Sinicropi I, supra.* The *Sinicropi I* case is distinguishable from the instant action, since the claimant had no established relationship with the minor child, nor were there allegations of fraud in procuring the affidavit of parentage.

The United States Supreme Court has implicitly recognized that a biological father who has established a parent-child relationship with his child has a due process right to maintain that parenting relationship, *Lehr* v *Robertson*, 463 US 248; 103 SCt 2985 (1983), and said relationship is constitutionally protected. *Quilloin* v *Walcott*, 434 US 246, 255; 98 SCt 549; 54 L Ed 2d 511 (1978). The Due Process and Equal Protection clauses of the 14th Amendment "bar the state from terminating the parental rights of an illegitimate father" without an inquiry into his

rights. *Caban* v *Mohammed*, 441 US 380, 99; 99 SCt 1760; 60 LEd2d 267 (1979), *Stanley v Illinois*, 405 US 645; 92 SCt 1208; 31 LEd2d 551 (1972), as quoted in *In re BKD*, 246 Mich App 212, 22; 631 NW2d 353 (2001). Michigan courts have not held that the Acknowledgement of Parentage Act can bar a father who has established a parent-child relationship with a child born out of wedlock from obtaining judicial recognition of that relationship.

In *Hauser* v *Reilly*, 212 Mich App 184, 187, 188; 536 NW2d 865 (1995),[4] the court was cognizant of the rights of putative fathers, and in considering constitutional protections, explicitly adopted the reasoning used by the United States Supreme Court, and held:

> *"Three different theories exist on the right of putative fathers to due process because of protected liberty interests in their relationships with their children. In Michael H. v. Gerald D., 491 U.S. 110, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989), Justice Scalia, writing for a plurality, determined that a putative father had no protected liberty interest in establishing and maintaining a relationship with his child when the child's mother gave birth to the child while married to another man. Justice Scalia reasoned that the United States Constitution did not grant the unwed father parental interests comparable to that of the married father. Id. at 130, 109 S.Ct. at 2345-46.*
>
> *Justice Brennan, dissenting in Michael H, derived the putative father's liberty interest from the father's biological link with his child, combined with a substantial parent-child relationship. Id. at 142-143, 109 S.Ct. at 2352-53 (Brennan J., dissenting). Justice Brennan specifically stated that an unwed father's mere biological link with his child is insufficient to establish a liberty interest. Id. at 143, n. 2, 109 S.Ct. at 2352 n. 2. The United States Supreme Court adopted a comparable holding in Lehr v. Robertson, 463 U.S. 248, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983).*
>
> *Dissenting in Lehr, Justice White stated that a father's biological link with his child forms his liberty interest. The nature of the parent-child relationship is the biological link. The development of that relationship is relevant to its "weight," not its nature. Id. at 271-272, 103 S.Ct. at 2998-99 (White, J., dissenting).*

* * * *

[4] In *Hauser*, the action was brought by a biological father who had no parent-child relationship, and sought to establish his parental rights.

We agree with the reasoning of Justice Brennan in Michael H. Following that analysis, if plaintiff in this case had an established relationship with his child, we would hold that he had a protected liberty interest in that relationship that entitled him to due process of law..."

Justice White's dissent in *Lehr*, 463 U.S. at 271, 103 S. Ct at 2998, further noted:

"We cannot fairly make a judgment based on the quality or substance of a relationship without a complete and developed factual record. This case requires us to assume that Lehr's allegations are true-that but for the actions of the child's mother there would have been the kind of significant relationship that the majority concedes is entitled to the full panoply of procedural due process protections."

The "nature of the interest" at stake here is the interest that a natural parent has in his or her child, one that has long been recognized and accorded constitutional protection. We have frequently "stressed the importance of familial bonds, whether or not legitimized by marriage, and accorded them constitutional protection." Little v. Streater, 452 US 1, 13; 68 LEd2d 627; 101 S Ct 2202 [2209] (1981). [Lehr, supra 463 U.S. at 270, 103 S Ct at 2998.]

Defendant-Appellant's mention in her Application for Leave (at pg. 22), of *Troxel* v *Granville*, 530 US 57; 120 SCt 2054 (2000) concerning violations of protected rights by virtue of these proceedings is curious, as the right of parent(s) to make a determination about their child is the right that Plaintiff-Appellee is fighting to protect and have restored to him.

The Circuit Court in the instant action was cognizant of Justice White's dissent in *Lehr*, as its ruling to appoint a Guardian ad Litem was meant to assist with developing a complete factual record to aid in future proceedings. The Court of Appeals agreed. See exhibit "A", majority opinion, pg. 8.

Defendant-Appellant makes further reference to *Sinicropi I, supra* at 171, that a putative parent cannot claim a constitutional right in the face of an unrevoked acknowledgement of parentage. However, in the instant case, unlike in *Sinicropi I*, the Plaintiff-Appellee had a long standing established parent-child relationship with the minor child. The United States Supreme

Court recognized in *Lehr, supra* that that relationship is essential to the inquiry into a putative father's Due Process rights. Defendant-Appellant has conveniently evaded reference to the scope of the relationship between Plaintiff-Appellee and the minor child, with the obvious hope that the courts will infer that Plaintiff-Appellee had no relationship with the child from her footnote (#17, pg. 21 of Application for Leave) stating that Plaintiff-Appellee has not seen the child since 2008. The courts are wise in their recognition that this forced absence is only because of Defendant-Appellant's actions in preventing Plaintiff-Appellee from continuing his relationship with the minor child. Certainly, Defendant-Appellant's failure to acknowledge or disclose relevant background information stems from her fear of implicating herself in the web of fraud she has spun. Under the circumstances, a judicially sanctioned investigation, discovery, and opportunity for hearing, is necessary to undue the harm caused by Defendant-Appellant.

The Circuit Court has not reached any conclusions with regard to the merits of Plaintiff-Appellee's claims. Plaintiff-Appellee is entitled to present his claims, conduct discovery, have the Guardian ad Litem act, and have his day in court. If it is determined that Plaintiff-Appellee lacks standing to prove his parentage, the Paternity Act would be unconstitutional under both the Michigan and Federal Constitutions.

CONCLUSION/RELIEF REQUESTED

Plaintiff-Appellee Hafez Bazzi respectfully requests that this Court:

1. Deny Defendant-Appellant's Application for Leave to Appeal;

2. Decline to take jurisdiction of this case, therefore permitting the July 1, 2010 Order of the Oakland County Circuit Court to be implemented forthwith; and

3. Plaintiff-Appellee be granted such other relief as is just and equitable.

Respectfully Submitted,
JOELSON, ROSENBERG, MOSS, COHEN,
WARREN & DRASNIN, P.L.C.

Dated: January 5, 2012

By: _____

MARC N. DRASNIN (P36682)
Attorney for Plaintiff-Appellee
30665 Northwestern Hwy., Suite 200
Farmington Hills, Michigan 48334
(248) 855-3088

STATE OF MICHIGAN
IN THE SUPREME COURT

HAFEZ M. BAZZI,

Plaintiff-Appellee,

vs.

ANNE ELIZABETH MACAULAY,

Defendant-Appellant.

Supreme Court Docket No. 144238
Court of Appeals Docket No. 299239

Trial Court Case No. 2009-762325 DP
(Oakland County Circuit Court)

/

MARC N. DRASNIN (P36682)
JOELSON, ROSENBERG, MOSS, COHEN,
WARREN & DRASNIN, P.L.C.,
Attorneys for Plaintiff-Appellee
30665 Northwestern Hwy., Suite 200
Farmington Hills, Michigan 48334
(248) 855-3088

ANNE ARGIROFF (P37150)
ANNE ARGIROFF, P.C.
Attorney for Defendant-Appellant
30300 Northwestern Hwy., Suite 135
Farmington Hills, Michigan 48334
(248) 615-4493

LORAINE R. KUHN (P31438)
Co-Counsel for Defendant-Appellant
30500 Northwestern Hwy., Suite 200
Farmington Hills, Michigan 48334
(248) 862-3933

/

APPEARANCE OF COUNSEL FOR PLAINTIFF-APPELLEE

To: Clerk of the Michigan Supreme Court and all parties of record

Please take notice that JOELSON, ROSENBERG, MOSS, COHEN, WARREN & DRASNIN, PLC, by MARC N. DRASNIN has entered an Appearance as counsel for Plaintiff-Appellee HAFEZ M. BAZZI, in the above referenced matter.

Respectfully Submitted,
JOELSON, ROSENBERG, MOSS,
COHEN, WARREN & DRASNIN, P.L.C.

Dated: January 6, 2012

By: _____
MARC N. DRASNIN (P36682)
Attorney for Plaintiff-Appellee
30665 Northwestern Hwy., Suite 200
Farmington Hills, Michigan 48334
(248) 855-3088